

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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U.S. DISTRICT COURT E.D.N.Y.
★ SEP 22 2009 ★

ORIGINAL

G&F
c/m

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FIRST UNUM LIFE INSURANCE COMPANY, **BROOKLYN OFFICE**

Plaintiff,

-against-

DAVID ROMAN,

Defendant.
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MEMORANDUM AND ORDER

Case No. 08-CV-04107 (FB) (RER)

Appearances:

For the Plaintiff:

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BLOCK, Senior District Judge:

On August 26, 2009, Magistrate Judge Ramon E. Reyes issued a Report and Recommendation ("R&R") recommending that Plaintiff, First Unum Life Insurance Company ("First Unum"), be awarded damages in the amount of \$48,524.38, representing \$46,846.93 in overpayments made to Defendant, David Roman ("Roman"), that Roman was obligated to repay; \$1,305.00 in attorney's fees; and \$372.45 in costs of litigating the action. See R&R at 7. The R&R also stated that failure to object within ten business days of receipt would preclude appellate review. See *id.* Roman was served with the R&R by First Unum on September 1, 2009; the ten business day period has therefore elapsed. See Docket Entry No. 13 (Cert. of Svc. (Sep. 9, 2009)).

If clear notice has been given of the consequences of failure to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) ("Where parties receive clear notice of the consequences, failure timely to object to a magistrate's report and recommendation operates as a waiver of further judicial review of the magistrate's decision."). The Court will excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error, *see Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000); no such error appears here. Accordingly, the Court adopts the R&R without *de novo* review and directs the Clerk to enter judgment in accordance with the R&R.

SO ORDERED.

s/FB


FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
September 17, 2009